



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on August 20, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-18674

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of TradeWinds Airlines filed 7/19/04 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail from points behind the United States, via the United States and intermediate points, to a point or points in the Republic of Korea and beyond.

Applicant rep: Pierre Murphy (202) 776-3980 DOT Analyst: Thuy H. Cooper (202) 366-5423

DISPOSITION

XX Granted in part (subject to conditions, see below)

XX Balance dismissed (see remarks below)

XX Granted route integration authority sua sponte (subject to conditions, see below)

The above action was effective when taken: August 20, 2004 through August 20, 2006.

Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

XX The authority granted is consistent with the aviation agreement between the United States and Korea.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Conditions: The authority granted to serve intermediate and beyond points is limited to countries with which the United States has signed open-skies agreements and/or countries for which TradeWinds holds authority to serve under certificates and exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in award of the route integration authority granted should be construed as conferring upon TradeWinds rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless TradeWinds notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in TradeWinds authority by virtue of the route integration exemption granted here, but that are not then being used by TradeWinds, the holding of such authority by route integration will not be considered as providing any preference for TradeWinds in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Remarks: We dismissed TradeWinds application to the extent that it requests authority from points behind the United States. The authority to conduct operations from points behind the United States is inherent in the authority that we award U.S. carriers to perform foreign air transportation.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.¹

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

¹ By Order 98-3-11, we found TradeWinds fit, willing, and able to conduct interstate and foreign charter air transportation of persons, property, and mail. TradeWinds currently provides all-cargo charter flights between the United States and Asia. Operationally, the services proposed in the instant application are not markedly different in scope from those charter services. Thus, we found no reason to question the carrier's qualifications to provide the services proposed in the present application.

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.